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EJH/Revised
3/18/03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Reissue Applicant: David E. Hirth
Patent No.: 6,079,496
Serial No.: 09/939,227
Filing Date: 08/26/2001
Title: Reduced Shock Landing Collar

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Group Art Unit: 3672
Examiner: Frank Tsai
Docket No.: D5407-25

GROUP 3600

MAR 14 2003

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RESPONSE TO OFFICE ACTION

Claim 7 of the issued patent is now rejected, again, over O'brien. The Examiner points to Figures 2 and 3 of O'brien and concludes that the movement regulation device is anticipated by shear pin 56 "which yields until a predetermined fluid pressure is applied." The Examiner has skipped over that portion of claim 7 that refers to the movement regulation device which states that it is "operable on said seat assembly to selectively regulate movement from said first to said second position." O'Brien's shear pin 56 can't do this. It may yield for some movement of seat 60 while yielding, but it very quickly shears or fails, as it is designed to do. However, shear pin 56 fails well before the seat 60 has reached the second position of Figure 3. In summary, O'Brien's device is incapable of regulation of movement of a seat assembly from a first to a second position as those positions are defined in claim 7.

Furthermore, claim 1 is allowed and claim 7 has the identical language and then additional elements. Applicant fails to understand how a broader claim 1 can be allowed while claim 7 that has the same language and a fluid chamber with a changing volume. The Examiner relies on the space between body 10 and seat 60 and concludes that such

structure meets the element in claim 7 for the fluid chamber. Yet the Examiner points to nowhere is the drawing or the specification to show that movement of the seat changes the volume of this chamber. In fact the volume between seals 40 and 42 of O'brien never changes as seat 60 moves down. For these 3 specific reasons given above, the anticipation rejection of claim 7 under §102(b) is respectfully requested to be withdrawn.

There is no prior art cited against claims 21-36 as the basis for rejection. Instead, the Examiner, again, contends that these claims are tantamount to an attempt to recapture subject matter surrendered in the application upon which this reissue application is based. The stated basis for the rejection is 35 U.S.C. 251. This time the Examiner's rejection appears to be based on the amendment to claims 1 and 13 in the previous application to distinguish O'brien. That amendment related to the selective regulation of the rate of movement from the first to the second position.

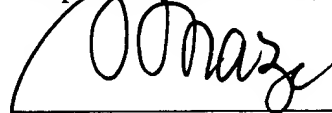
As a first matter, claim 23 recites movement regulation by displacement of fluid from a cavity through an outlet that presents a flow restriction. That language meets the limitation added to claims 1 and 13 in the previous application and is, in fact, narrower. It is more specific as to how the regulation is accomplished, reciting fluid displaced from a cavity through a flow restriction. Therefore, under the *Clement* case cited by the Examiner and the discussion in MPEP §1412.02 there is no basis to reject claims 23-33 under 35 U.S.C. §251 because the reissue claim "is narrower in all respects, the recapture rule does not apply..." Claim 23 is narrower in the respect that it adds the non-metallic body from claim 21; a narrowing feature unrelated to past rejections and it recites the movement regulation in greater structural detail.

The Examiner also cites the recapture rule against claims 21-22 and 34-36. The following portion from MPEP §1412.02 is relevant,

"If the broadening aspect of the reissue claim relates to subject matter previously surrendered, the examiner must determine whether the newly added narrowing limitation in the reissue claim modifies the claim such that the scope of the claim no longer results in a recapture of the surrendered subject matter. If the narrowing limitation modifies the claim in such a manner that the scope of the claim no longer results in a recapture of the surrendered subject matter, then there is no recapture. In this situation, even though a rejection based on recapture is not made, the examiner should make of record the reason(s) why, as a result of the narrowing limitation, there is no recapture.

Claim 21 includes the non-metallic body. The addition of this significant limitation has modified the claim significantly so as to alter the scope of the claim so as to preclude recapture of the rate of movement regulation. As stated in the MPEP, the narrowing limitation of the non-metallic body precludes the application of recapture. This is a broadening reissue filed within 2 years of the issue of the underlying patent to cover a structure that could have been claimed but wasn't in the original application, hence the error that is the grounds for this application. Claim 21 is focused on a non-metallic body having a seat to accept an object for pressure buildup and that facilitates subsequent milling for full bore access. It has no movement or regulation of movement recited. Its focus is on the construction material of the body and the subsequent benefits of a non-metallic structure. There is simply no recapture under these circumstances.

Respectfully submitted,



March 7, 2003

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PTO/SB/21 (01-03)
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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/939,227
	Filing Date	08/24/2001
	First Named Inventor	David E. Hirth
	Art Unit	3672
	Examiner Name	Frank Tsay
Total Number of Pages in This Submission	Attorney Docket Number	D5407-25

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